

*In the Matter of William Makowitz, Township of Parsippany-Troy Hills*  
DOP Docket No. 2005-172  
**(Merit System Board, decided August 11, 2004)**

The Director, Division of Human Resource Management (HRM), petitions the Merit System Board for the retroactive permanent appointment of William Makowitz to the title of Deputy Police Chief, Township of Parsippany-Troy Hills, effective April 2, 2001.

By way of background, Makowitz, a veteran, was sworn in as a Deputy Police Chief on April 2, 2001, and he has been performing the duties of that title since that date. The appointing authority neglected to submit a Request for Personnel Action to the Department of Personnel (DOP) at the time of his appointment. As a result, Makowitz's appointment was never properly recorded by the DOP, and no promotional announcement was issued for the title of Deputy Police Chief. During a routine payroll audit in April 2004, HRM discovered the discrepancy. In the instant petition, the Director of HRM notes that, had the appointment been properly reported and a promotional announcement issued in April 2001, it was likely that Makowitz would have been permanently appointed as Deputy Police Chief via waiver of competitive examination in accordance with *N.J.A.C. 4A:4-2.7*. Thus, HRM requests that the Board approve Makowitz's permanent appointment to the title of Deputy Police Chief, effective April 2, 2001. The appointing authority joins in this request.

It is noted that the appointing authority asserts that, at the time of Makowitz's appointment as Deputy Police Chief, there would have been only one other eligible candidate for the promotional examination. In this regard, Anthony DeZenzo, a non-veteran, was permanently appointed as a Police Captain on March 25, 1998. However, the Board notes that, on August 13, 2003, the Commissioner of Personnel granted a similar request for retroactive permanent appointment dates for two Police Captains with the Township. Specifically, in *In the Matter of Police Captain (PM1388W), Township of Parsippany-Troy Hills* (Commissioner of Personnel, decided August 13, 2003), Michael Peckerman and Paul Philipps were awarded retroactive permanent appointment dates of June 1, 1999 and April 2, 2001, respectively, to the title of Police Captain.<sup>1</sup> The Board notes that the

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<sup>1</sup> It is noted that Philipps was initially awarded a retroactive appointment date of January 1, 2000. However, based on subsequent correspondence from the appointing authority and Philipps, the Director, Division of Merit System Practices and Labor Relations, advised all affected parties of the correct appointment date of April 2, 2001 by letter dated June 22, 2004.

retroactive appointment dates awarded to Peckerman and Philipps were necessitated by a similar administrative error by the appointing authority. In this regard, while a valid eligible list for Police Captain (PM1388W), Township of Parsippany-Troy Hills existed from April 22, 1999 through April 21, 2002, the appointing authority did not request a certification of this eligible list, and it did not report any provisional appointments during the life of the list. The appointing authority, likewise, never reported to the DOP that any permanent appointments were effected during this time period. However, during a November 2002 payroll audit by HRM, it was discovered that Peckerman and Philipps were serving as Police Captains, and the appointing authority considered them permanent employees. Thus, based on the administrative error and the fact that Peckerman and Philipps ranked first and second, respectively, on the eligible list in effect at the time, the Commissioner found good cause to revive the Police Captain (PM1388W), Township of Parsippany-Troy Hills, eligible list in order to permanently appoint Peckerman and Philipps, effective June 1, 1999 and April 2, 2001, respectively.

## CONCLUSION

In the instant matter, the Director of HRM and the appointing authority request that William Makowitz be permanently appointed to the title of Deputy Police Chief, with a retroactive appointment date of April 2, 2001 for seniority and record purposes. There is no dispute that the appointing authority's administrative error in failing to report Makowitz's appointment to the DOP prevented him from achieving permanent status in his title. In support of the instant request, both parties assert that, had Makowitz's appointment been properly reported to the DOP and a promotional announcement subsequently issued, it is likely that Makowitz would have been permanently appointed as Deputy Police Chief via waiver of competitive examination in accordance with *N.J.A.C. 4A:4-2.7*. While the appointing authority emphasizes that there would have been only one other eligible candidate for Deputy Police Chief at the time of Makowitz's appointment, the record reflects that there were at least two other employees serving permanently in the title of Police Captain as of April 2, 2001, Anthony DeZenzo and Michael Peckerman. In this regard, while Peckerman's June 1, 1999 appointment was not reported to the DOP at the time it was effectuated, he was subsequently awarded a retroactive appointment date for seniority and record purposes. *See In the Matter of Police Captain, supra*. While not stated explicitly in this decision, the type of remedy afforded to Peckerman generally includes the entitlement to promotional opportunities based on his retroactive appointment date. *See In the Matter of David J. Barrett, et al.* (MSB, decided November 19, 2003). Therefore, based on Peckerman's July 1, 1999 permanent appointment to

Police Captain, there would have been a total of three eligible candidates for Deputy Police Chief as of April 2, 2001. Based on the criteria set forth in *N.J.A.C.* 4A:4-2.7(a)3, an appointment upon waiver of competitive examination could still have been possible at the time of Makowitz's appointment.

However, given the multiple administrative errors of which the DOP has recently become aware concerning appointments by the appointing authority, the Board is reluctant to approve the extraordinary remedy of waiving the promotional announcement and examination process in its entirety in this matter. Specifically, the Board is wary of relying on the appointing authority's representations or the DOP's limited records regarding the number of potentially eligible applicants for a Deputy Police Chief promotional examination in 2001, since it is evident that numerous appointments went unreported for a significant time period. Thus, in recognition that there may be additional employees whose employment records are similarly inaccurate, the Board finds that it would be premature at this time to grant Makowitz a retroactive permanent date of appointment and a complete waiver of the examination process.

Nevertheless, the Board is cognizant that Makowitz has been serving as the Deputy Police Chief since April 2, 2001, and, but for the appointing authority's failure to document and report his appointment, he would have had the opportunity to compete for a permanent appointment to that title in 2001. Clearly, the situation should not go unremedied. Therefore, it is appropriate to fashion a remedy that would replicate the proper announcement and examination process under the circumstances that existed at the time of his appointment. In this regard, had Makowitz's appointment been reported to the DOP, a promotional announcement for the title of Deputy Police Chief would have been issued, inviting eligible candidates to apply for the promotional opportunity. The announcement process would have ensured that the records of the DOP and the appointing authority accurately reflected those candidates serving permanent appointments in the title of Police Captain, and it would have enabled the DOP to remedy any possible discrepancies in the records at that time. At this juncture, the only way to ensure such a result would be to issue a promotional announcement for the title of Deputy Police Chief with a retroactive closing date of April 2, 2001. The announcement should be open to applicants in the competitive division who were serving in and had an aggregate of one year of continuous permanent service in the title of Police Captain as of the closing date. The announcement shall also include a current filing deadline by which applications must be filed with the DOP. Upon receipt of the applications filed in response to this promotional examination, the Division of Selection Services will then determine the eligibility of each candidate and whether a

promotion upon waiver of competitive examination may be processed in accordance with *N.J.A.C.* 4A:4-2.7. In light of the administrative error which prevented Makowitz from competing for this position in a timely manner, the Board also finds that, if Makowitz is permanently appointed following the announcement and examination process and he successfully completes a current working test period, he is entitled to a retroactive appointment date of May 31, 2001<sup>2</sup> for seniority and record purposes. The Board notes that this unique remedy appropriately balances the competing interests involved in the instant matter.

## **ORDER**

Therefore, it is ordered that the Division of Selection Services issue a announcement for the promotional examination for the title Deputy Police Chief in the Township of Parsippany-Troy Hills. The examination shall be announced open to employees in the competitive division who were serving in and had an aggregate of one year of continuous permanent service in the title of Police Captain as of April 2, 2001. The announcement shall contain a current filing deadline by which applications must be filed with the Department of Personnel. Upon receipt of all applications and after making the appropriate eligibility determinations, the Division of Selection Services will then determine whether Makowitz may be appointed in accordance with *N.J.A.C.* 4A:4-2.7.

It is further ordered that, if Makowitz is permanently appointed to the title of Deputy Police Chief following the announcement and examination process, and upon completion of a current working test period, he shall receive a retroactive appointment date of May 31, 2001 for seniority and record purposes.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>2</sup> According to available records, in 2001, promotional examinations for the title of Deputy Police Chief were announced twice a year: in March and September. Thus, it is possible that the announcement concerning Makowitz's position could have issued in March 2001. The available records also reveal that, of the Deputy Police Chief announcements issued in March 2001, two were processed as waivers with an approval date of May 31, 2001. It is noted that the approximate two-month period between the closing date and the approval of the waivers represents the typical processing time for such requests. Accordingly, had the promotional process proceeded in a timely manner, the earliest date on which Makowitz's permanent appointment would have been approved was May 31, 2001.